

Policy and Advocacy Committee Minutes October 13, 2011

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., #N220
Sacramento, CA 95834

Members Present

Renee Lonner, Chair, LCSW Member
Judy Johnson, LEP Member
Christine Wietlisbach, Public Member

Staff Present

Kim Madsen, Executive Officer
Tracy Rhine, Asst. Executive Officer
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst

Members Absent

None

Guest List

On file

I. Introductions

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 9:33 a.m. Christina Kitamura called roll, and a quorum was established. Christine Wietlisbach was absent at the opening of the meeting. Staff, Committee members, and attendees introduced themselves.

II. Review and Approval of the July 21, 2011 Policy and Advocacy Committee Meeting Minutes

Ms. Lonner noted a correction on page 9, 4th paragraph up. "Issues" should be corrected to "issue."

Ben Caldwell, American Association for Marriage and Family Therapy California Division (AAMFT-CA), requested a correction on the top of page 5, AAMFT to AAMFT-CA.

Renee Lonner moved to approve the July 21, 2011 Policy and Advocacy Committee meeting minutes as amended. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

III. Legislative Update

Rosanne Helms reported that four bills sponsored by the Board of Behavioral Sciences were signed by the Governor: SB 274 regarding extension of the grandparenting period for professional clinical counselors (LPCC), SB 943 Board Omnibus Bill, SB 363 regarding marriage and family therapist interns and trainees, and SB 704 regarding examination restructure.

SB 274 was an urgency measure and is already effective. The changes to the exam process as a result of SB 704 will not take place until January 2013. SB 943 and SB 363 will take effect January 1, 2012.

Also signed by the Governor were the following bills: SB 146 regarding LPCC clean-up language, SB 718 regarding elder and dependent adult abuse, and AB 1424 regarding suspension of profession license due to unpaid tax debt.

The Governor vetoed SB 747 regarding continuing education in lesbian, gay, bisexual, and transgender patients.

Dr. Johnson noted on SB 363, #3 should also state that licensed educational psychologists (LEP) do not supervise MFT interns.

Mr. Caldwell requested a future discussion regarding SB 363, #1 regarding marriage and family therapist trainee practicum and the interpretation of the law.

IV. Rulemaking Update

Ms. Helms reported that a list of regulatory proposals was currently pending. This list was provided under Rulemaking Update in the meeting materials provided.

V. Legislative Clean-Up Business and Professions Code Sections 4980.34, 4980.43, 4980.78, 4980.397, 4980.398, 4980.399, 4984.4, 4989.42, 4992.05, 4992.07, 4992.09, 4996.6, 4999.22, 4999.32, 4999.45, 4999.46, 4999.57, 4999.58, 4999.59, 4999.90, 4999.106, 4999.120 and Health and Safety Code Section 124260

Ms. Helms reported that staff has determined that several sections of the Business and Professions Code (BPC), and one section of the Health and Safety Code (HSC) pertaining to the Board of Behavioral Sciences require amendments that clarify or add consistency to the law.

1. Amend BPC Section 4980.34 – Addition of Licensed Professional Clinical Counselors (LPCCs)

Section 4980.34 states the intent of the Legislature that the Board license marriage and family therapists (LMFTs), clinical social workers (LCSWs), and educational psychologists (LEPs). It does not currently include licensure of LPCCs.

Recommendation: Add LPCCs to this section.

2. Amend BPC Section 4980.43 – Supervised Experience

Section 4980.43(c) specifies the type of supervision that is required for credited experience. As written, this law implies that direct supervision is required for all experienced gained. However, staff believes that there are certain types of experience for which direct supervision is not appropriate.

Recommendation: Amend Section 4980.43(c) to exempt experience gained through professional enrichment activities, as defined in 4980.43(a)(7)(B), from direct supervision.

3. Amend BPC Sections 4999.32, 4999.57, 4999.58, and 4999.59 – Reference to California Law and Professional Ethics Course

LPCC code Sections 4999.57, 4999.58, and 4999.59 each discuss examination eligibility requirements for various types of out of state applicants or licensees. These sections erroneously imply that the applicant must complete an 18-hour California law and professional ethics course, in addition to the 18-hour ethics course that is already required under subdivision (e) of Section 4999.32. Staff does not believe it is the intent of the law to require an applicant to complete two 18-hour California law and professional ethics courses.

In addition, subdivision (e) of Section 4999.32 states that the 18-hour California law and ethics course must be taken, but it does not specify any of the course content that such a course should have as Sections 4999.57, 4999.58, and 4999.59 do.

Recommendation: Delete the 18-hour California law and ethics course requirement in Sections 4999.57, 4999.58, and 4999.59, as these sections already specify that the applicant must meet the requirements of subdivision (e) of Section 4999.32, which requires the same course.

Amend paragraph (6) of subdivision (e) of Section 4999.32 to specify that the course content of the California law and ethics course must contain the elements that were previously listed in Sections 4999.57, 4999.58, and 4999.59.

4. Amend BPC Section 4980.78 – California Law and Professional Ethics

Section 4980.78 discusses substantially equivalent education requirements for out of state applicants for licensure or registration applying after January 1, 2014. Under current law, such an applicant is required to take an 18-hour course in California law and professional ethics. The new law effective January 1, 2014 also requires a course in California law and professional ethics, however there is no specification on the length of the course.

Recommendation: Amend Section 4980.78 to require the course in California law and professional ethics be 18 hours in length.

5. Amend BPC Sections 4980.397 and 4992.05 – Acceptance of Valid Passing Exam Scores

These sections were added by SB 704, which restructures the examination process for the Board's LMFT, LCSW, and LPCC licensees beginning in 2013. Under the restructure, all applicants would be required to take and pass a California law and ethics examination and a clinical examination.

For LPCCs, SB 704 specified that a valid passing score on the clinical examination must have been obtained less than seven years prior to the application date. This is because LPCC law gave the Board the discretion to choose whether to offer its own clinical examination or to use the National Clinical Mental Health Counselor Examination (NCMHCE). The Board chose to use the NCMHCE, which has been offered for many years. Therefore, the law needed to specify how long past NCMHCE passing scores would be acceptable.

The Board is also considering using a national examination as the clinical examination for LMFTs and LCSWs. However, there is no limit in current law on how old of a passing score is allowable. For example, if the Board were to accept a national exam for LMFTs, an applicant could, under current law, apply using an exam score for the accepted exam that was 20 years old.

Recommendation: Amend Sections 4980.397 and 4992.05 to limit the valid passing clinical exam scores of LMFT and LCSW applicants to those obtained less than seven years prior to the application date.

6. Amend BPC Sections 4980.398, 4980.399, 4992.07, and 4992.09 – Examination Restructure Transition

These sections outline scenarios for LMFT and LCSW applicants who have already taken or obtained eligibility for previous examinations once the examination restructure becomes effective.

Recommendation: Make technical amendments to clarify that if an applicant has previously passed the standard written exam, but not the clinical vignette exam, then under the examination restructure, he or she would need to pass the new clinical exam. However, he or she would not need to take the new California law and ethics exam, because the previously passed standard written exam had already fulfilled this requirement.

7. Amend BPC Sections 4984.4, 4989.42, 4996.6, and 4999.106 – Fingerprinting

These sections outline requirements for a licensee whose license was not renewed within three years after its expiration, to obtain a new license.

California Code of Regulations (CCR) Title 16, Section 1815, requires all licensees and registrants to submit fingerprints and complete a state and federal level criminal offender record information search through the Department of Justice. In addition, Section 4999.51 of the LPCC code requires LPCC applicants for licensure or intern registration to do this as well. However, this requirement is not currently referenced in these sections.

Recommendation: Amend Sections 4984.4 (LMFTs), 4989.42 (LEPs) and 4996.6 (LCSWs) to reference the fingerprinting requirement in regulations, and amend Section 4999.106 (LPCCs) to reference the similar requirements in LPCC code.

8. Amend BPC Sections 4980.04, 4999.22 – Licensed Marriage and Family Therapist Act

Amend Section 4980.04 to reference the Licensed Marriage and Family Therapist Act. Section 4999.22 should reference the Licensed Marriage and Family Therapist Act, instead of the marriage and family therapy licensing laws.

Recommendation: Make amendments to Sections 4980.04 and 4999.22 to reference the Licensed Marriage and Family Therapist Act.

9. Amend BPC Section 4999.45 – 90 Day Rule for PCC Interns

Section 4999.45(a) states that a PCC intern must not perform any duties, except as a clinical counselor trainee, until he or she is registered as an intern. This is in conflict with Section 4999.46(d), which allows post-degree hours of experience to be gained as long as the applicant applies for intern registration within 90 days of degree conferral.

Recommendation: Amend 4999.45(a) to clarify and make consistent in law that a PCC intern may perform duties as an intern provided that he or she applies for intern registration within 90 days of the granting of his or her degree, and that he or she is registered as an intern by the Board.

10. Amend BPC Section 4999.45 – Annual Renewal for PCC Interns

Section 4999.45(d) states that a PCC intern must file for renewal annually. This implies that a PCC intern may continue to practice as long as they fill out a renewal form and send it to the Board. However, the Board must review the application and determine that the intern meets certain criteria in order to renew the application.

Recommendation: Amend Section 4999.45(d) to clarify that a PCC intern must renew annually in order to retain their intern status.

11. Amend BPC Section 4999.45 – Limitation on PCC Intern Employment

Section 4999.45(e) states that a PCC intern must cease employment after six years unless he or she obtains a new intern registration. This is repetitive, as subsections (d) and (f) already cover this requirement.

Recommendation: Delete Section 4999.45(e).

12. Amend BPC Section 4999.46 – Exam Eligibility

Section 4999.46 lists the supervised experience requirements a PCC intern must meet in order to qualify for licensure. However, a PCC intern must also meet these requirements in order to qualify for examination eligibility.

Recommendation: Amend Section 4999.46 to state that an applicant must meet the listed supervised experience requirements to qualify for licensure or examination eligibility.

13. Amend BPC Section 4999.46 – Definitions

Section 4999.46(b)(5) states the requirement of 150 supervised clinical experience hours in a hospital or community mental health setting. LPCC regulations now specifically define the terms “clinical setting” and “community mental health setting.”

Recommendation: Amend Section 4999.46(b)(5) to reference these definitions in regulation.

14. Amend BPC Section 4999.90 – Unprofessional Conduct

Several subdivisions of the LPCC unprofessional conduct section are in need of minor technical amendments to conform to the unprofessional conduct sections for other licensees.

Recommendation: Make technical amendments to Section 4999.90 to conform with existing laws regarding substance abuse, supervision, and inclusion of LPCCs.

15. Amend BPC Section 4999.120 - LPCC Fees

Section 4999.120 sets the various fees charged to LPCCs. SB 274 (Chapter 148, Statutes of 2011) removed the annual renewal requirement for LPCC licenses issued under grandparenting. Therefore, the fee listed in subsection (h) is obsolete.

Recommendation: Amend section 4999.120 of the LPCC code to remove the fee established in subsection (h).

16. Amend HSC Section 124260 – Minors- Consent to Mental Health Treatment

SB 543 (Chapter 503, Statutes of 2010) allows a minor who is 12 years of age or older to consent to mental health services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in those services. This bill added HSC Section 124260, which defines the “professional person” who must make the determination if the minor is mature enough to participate. The list of professional persons currently does not include LPCCs or PCC interns. A minor technical change is also needed to correct a reference to LMFT code.

Ms. Helms stated that this item will be deleted because the proposal amending Health and Safety Code already became law through SB 146.

Mr. Caldwell referred to #3, stating that the proposed language specifically names HIPAA. He explained that if HIPAA is ever renamed or superseded, this law would have to be changed. He requested to use a generic term than to refer to the specific federal law by name. Ms. Rhine agreed.

Mr. Caldwell referred to item 5. He asked if the intent was to capture out of state applicants for licensure, making sure that their passing score on the national exam is recent. Ms. Helms confirmed that was the intent. Mr. Caldwell stated that he would like to discuss this matter with AAMFT about what this looks like across the country and offer feedback.

Ms. Rhine stated that the Board should discuss whether to accept passing scores going back as far as 7 years or not. Looking back one year at the Association of Social Work Boards (ASWB) examination, for example, it did not meet California’s standards.

Ms. Lonner expressed that she would like to have the full Board discuss this.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), stated that the folks who passed the national exam some years ago, have been practicing successfully for years without any disciplinary actions taken against their license. He requested consideration be given to that fact before requiring them retake the exam.

Jill Epstein, California Association of Marriage and Family Therapists (CAMFT), stated that exams are always evolving, and some professions can transfer those scores even though the exam changed. She would like to see what other states have done.

Dr. Johnson reminded the committee and staff to keep “minimal competency” in mind.

Rebecca Gonzales, NASW-CA, noted the situation of those who took the national exam prior to 1999 in another state. California did accept that exam prior to 1999.

Mr. Caldwell referred to item 14 and the proposed language to change “intern” to “registrant”; however, not all interns gaining experience are registered. Particularly with the item proposed in the omnibus bill that allows interns to gain experience in the first 90 days after graduation. Mr. Caldwell is concerned that by changing intern to registrant, those in the 90-day window, between the period of graduation and registration, are not being captured.

Ms. Rhine explained that the term “intern” is defined as someone who is registered by the Board. The discussion is not the change of terms. During the 90-day window, the individual is not an intern, not a trainee, but can gain hours.

Ms. Lonner suggested changing the term to “applicant.”

A discussion will be held at the full Board meeting.

Since the California Law and Ethics exams differ between professions, Ms. Epstein requested that the exam materials specifically state the profession.

Renee Lonner moved to direct staff to make any non-substantive changes to the proposed language, recommend the Board sponsor legislation to make the suggested changes, and bring discussions to the Board regarding items 3, 5, and 14. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

VI. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of Regulations Title 16, Section 1833

Ms. Helms reported on the proposed regulatory changes resulting from the passage of SB 363. SB 363 limited the number of client-centered advocacy hours for a marriage and family therapist intern to 500 hours.

Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact, professional enrichment activities, and client centered advocacy together to 1,250 hours. The Board had concerns that this allowed an intern to potentially obtain too many client centered advocacy hours, when they should be gaining the majority of their hours counseling clients in order to adequately prepare them for licensure.

Due to these concerns, SB 363 revised the law to allow up to 500 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes, and client centered advocacy.

A conflict now exists between the revised law and Section 1833(a)(4) of the Board’s regulations. This section of regulations currently only allows up to 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes. This is in direct conflict with the 500 hours allowed with the revisions of SB 363.

Proposed changes are:

1. Strike CCR Section 1833(a)(4), which is the section in regulations limiting experience gained administering and evaluating psychological tests, writing clinical reports, writing

progress notes, or writing process notes to 250 hours. The new requirement from SB 363, which allows up to 500 hours, is already clearly specified in Section 4980.43(a)(9) of the code.

2. Correct reference errors in Section 1833 of the Board's regulations that have occurred due to changes in statute.

Judy Johnson moved to direct staff to make any nonsubstantive changes to the attached amendments and to make the proposed regulatory changes regarding Section 1833(a)(4). Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

VII. Discussion Regarding California Marriage and Family Therapy Occupational Analysis and Collaboration with Association of Marriage and Family Therapy Regulatory Boards

Kim Madsen provided a background and status update regarding the California Marriage and Family Therapy Occupational Analysis and collaboration with the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB).

The Examination Program Review Committee (EPCR) was established in February 2009 to conduct a holistic review of the Board's exam programs and evaluate the issues regarding the exams. Part of the committee's work was to consider the use of national examination for licensure in California.

On May 4, 2009, Lois Paff Bergen, Executive Director for the AMFTRB, presented an overview of AMFTRB's national examination to the EPCR.

Ms. Bergen explained that AMFTRB is a body of states that regulates marriage and family therapists. Although California is a member of AMFTRB, California does not use the AMFTRB national examination for licensure. Ms. Bergen explained that some states accept California's examination as equivalent and some do not.

Ms. Bergen provided information regarding the development of the national examination and noted California practitioners participate in this process. Ms. Bergen stated AMFTRB recognizes the importance of using California practitioners because marriage and family therapists are very well known in California and represent a great number compared to all of the marriage and family therapists in the country.

AMFTRB develops three forms of the examination each year with 200 questions on each exam. The national exam is offered during three windows and is administered in a four hour block. Ms. Bergen stated that the last role delineation study (occupational analysis) was completed in 2004/2005.

On September 29, 2009, the AMFTRB contacted the Board regarding a possible interest in collaborating with AMFTRB on the next occupational analysis.

The Board completed its Marriage and Family Therapist occupational analysis in 2006/2007.

Board staff contacted Ms. Bergen regarding the 2009 letter to determine if the interest in collaborating with the Board on an occupational analysis remained. Ms. Bergen confirmed that AMFTRB's interest had not changed. Ms. Bergen stated that AMFTRB was scheduled to begin their occupational analysis in January 2012.

The process of this joint venture was discussed. The Board or its designee and a California Subject Matter Expert (SME) will participate in the development of the survey which will be used to gather information regarding the practice of marriage and family therapists throughout the country. Upon completion of this survey, item writing and exam construction workshops will occur. Each workshop will include the participation of an SME from California. Although, the Board or its designee will not directly participate in these workshops, access to the process will be granted.

Board staff has initiated the steps to obtain the services of a vendor to assist the Board in this joint venture. The progress and results of this joint venture will be reported at future meetings.

Ms. Epstein asked if it was discussed how the subject matter experts (SME) will be chosen. Ms Madsen responded those details have not yet been discussed, but will most likely be offered to the Board's current SMEs.

VIII. Discussion and Possible Rulemaking Action Regarding Implementation of SB 704 (Negrete McLeod); Examination Restructure

Ms. Helms presented the proposed regulatory changes regarding implementation of SB 704. SB 704 restructures the examination process for applicants who are seeking LMFT, LCSW, and LPCC licensure on or after January 1, 2013.

This bill was sponsored by the Board as a result of extensive analysis of the examination process. The Board's Examination Program Review Committee (EPRC) was appointed in February 2008. The purpose of the EPRC was to conduct a review of the Board's LCSW, LEP, and LMFT examination programs and to evaluate associated issues.

On December 7, 2009, the EPRC made several recommendations relating to modifications of the current licensure exam process for LMFTs and LCSWs. The language in SB 704 was written based on the recommendations of the EPRC.

Several regulatory amendments now need to be made in order to be consistent with the changes in SB 704.

1. Examination Restructure for LMFTs, LPCCs, and LCSWs

Effective January 1, 2013, applicants for LMFT, LPCC, and LCSW licensure shall pass two exams: a California law and ethics examination (law and ethics exam) and a clinical examination (clinical exam). These new exams replace the standard written and the clinical vignette exams currently in place for MFTs and LCSWs, and changes the exam structure for LPCCs as described in the next section.

Law and Ethics Exam

- A new registrant with the Board would be required to take the law and ethics exam. This exam must be taken within the first year of registration with the Board.
- If the law and ethics exam is not passed within the first renewal period, the registrant must complete a 12-hour law and ethics course in order to be eligible to take the exam in the next renewal cycle. The exam must be retaken in each renewal cycle until passed. In addition, in each year the exam is not passed, the 12-hour law and ethics course must be taken to establish examination eligibility.

- According to current law, a registration cannot be renewed after six years. If a registrant's registration expires, he or she must pass the law and ethics exam in order to obtain a subsequent registration number.

Clinical Exam

- Once a registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take the clinical exam. This exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the clinical exam.

2. Examination Restructure for LPCCs

Under SB 704, LPCCs will follow the same examination process as LMFTs and LCSWs for the law and ethics exam, however, the current exam structure for LPCCs differs from LMFTs and LCSWs.

Current law states that once an LPCC registrant has completed all supervised work experience, completed all education requirements, and passed the law and ethics exam, he or she may take a clinical exam administered by the Board, or the national examinations, if the Board finds that one of these examinations meet the prevailing standards for validation and use of the licensing and certification tests in California.

At its meeting in May 2011, the Board accepted the National Clinical Mental Health Counselor Examination (NCMHCE) as meeting California testing standards. This proposed regulation establishes the NCMHCE as the designated examination for LPCCs.

The NCMHCE exam must be passed within seven years of an individual's first attempt. If it is not passed within this timeframe, the individual's eligibility to further attempt the exam is placed on hold. He or she must then pass the current version of the law and ethics exam before re-establishing eligibility to take the NCMHCE exam. This is consistent with the structure proposed for LMFTs and LCSWs taking the clinical exam.

3. Proposed Regulatory Changes

Several sections of the Board's regulations need to be revised in order to be consistent with the changes in SB 704 and the Board's recent decision to accept the NCMHCE exam for LPCCs. These changes fall into three categories:

- Incorporation of the NCMHCE and the California Law and Ethics examination into regulation as Board-designated exams required for LPCC licensure candidates.
- Revision of references to examination names in regulations in order to be consistent with the newly required examinations for registrants seeking an LMFT, LCSW, or LPCC license.
- Incorporation of language allowing the Board to accept the national examinations for LMFT and LCSW licensure, if the examinations are determined to be appropriate by

the Board. The Board voted in November 2010 to accept the ASWB's Clinical Level Examination for those seeking licensure with the Board. The Board will be working with the AMFTRB in 2012 to determine the viability of using its exam for LMFT licensure in California.

In addition, the passage of SB 274 deleted the annual renewal requirement for LPCCs who obtained a license through the grandparenting process. Grandparented LPCCs will now renew biennially, consistent with all other Board-issued licenses. The proposed regulations incorporate this change as well.

Mr. Caldwell expressed his appreciation for this long, involved process. Ms. Lonner added that staff did a great job.

Ms. Epstein noted an error on Attachment A, Examination Restructure Regulations, Section 1806(d). "Licensed marriage and family therapy" should be "licensed marriage and family therapists."

Judy Johnson moved to authorize staff to make any non-substantive changes and submit a rulemaking package to the Board for consideration. Renee Lonner seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee adjourned for a short break at 10:42a.m. and reconvened at 11:03 a.m. Upon reconvening, items IX and X were taken out of order.

X. Discussion and Possible Rulemaking Action Regarding Revision of Disciplinary Guidelines and Voluntary License Surrender

Ms. Helms presented the proposed revisions to the Disciplinary Guidelines, which are incorporated by reference into Board regulations. These changes are based on suggested adjustments from the Board's enforcement unit.

1. Update of penalty guideline references: Due to legislative changes, several sections listed as references in the penalty guidelines need to be updated to reference the correct section.
2. Reimbursement of Probation Program: A respondent's reimbursement to the Board of his or her probation program costs is listed in the Disciplinary Guidelines as an optional term and condition of probation. However, it is standard that the Board require a probationer to reimburse the Board for probation costs. Therefore, this condition has been moved to the list of standard terms and conditions of probation.
3. Psychotherapy: If a respondent is required to participate in psychotherapy as one of the terms of probation, the disciplinary guidelines currently require that within 60 days of the effective date of the Board's decision, the respondent must submit to the Board the name and qualifications of the therapist he or she would like to choose. However, once a respondent is notified of an adopted decision, they have 30 days before the decision becomes effective. From this time, under current law, the respondent then has another 60 days to choose a therapist. As a result, respondents are not starting their required psychotherapy for approximately 3 to 4 months. Therefore, staff proposes changing the 60 day period to submit a therapist for approval to 15 days. If this change is implemented, a respondent would know 45 days in advance that they must choose a

therapist and submit the pertinent information about their chosen therapist to the Board.

4. Rehabilitation Program: The Board may require a respondent to participate in a rehabilitation program as one of the terms of probation. Staff recommends an amendment requiring a rehabilitation program to submit to the Board quarterly written reports addressing the respondent's progress in the program.

Although this requirement is currently written in the instructions and the approval letter of the rehabilitation program, staff is requesting its addition to the Disciplinary Guidelines for further clarity.

5. Submission of Biological Fluid Testing and Samples: If a respondent is required to submit to biological fluid testing and samples as a term of probation, the Disciplinary Guidelines state it is currently his or her responsibility to ensure the testing agency submits the results to the Board. However, this is now done automatically through the testing agency. Therefore, staff proposes deleting this requirement.
6. Monitoring of Billing System: Under current law, if a respondent is required to obtain a billing system monitor as a term of probation, the respondent will be notified of the decision and have 30 days before it becomes effective. Once effective, the respondent must then obtain a billing system monitor within 30 days.

Staff proposes an amendment that is more consistent with the Board's requirements for other terms and conditions of probation. A respondent would still be notified of the Board's decision and have 30 days before it becomes effective. Once effective, the respondent would need to submit the name of the billing monitor he or she would like to use for Board approval within 15 days. Once the Board approves a billing monitor, the respondent must obtain the services of the billing monitor within 15 days of the Board's approval.

7. License Surrender: Staff proposes a clarification to the license surrender language in the Disciplinary Guidelines. The modification would add gaining experience to the list of requirements that an applicant would need to meet if he or she decided to reapply for licensure in the future. Gaining experience hours is required for licensure; therefore it should be included in the list.

Mr. Caldwell requested an organized copy of the disciplinary guidelines, as the original is difficult to follow, and the listed changes. In regards to proposing to remove Failure to Comply with Mandated Reporting Requirements from the Table of Contents, Mr. Caldwell stated that it was already omitted from the chart and asked why it was not part of the Disciplinary Guidelines. Ms. Helms responded that it has not been included for some time. Ms. Rhine added that it is under Unprofessional Conduct.

Mr. Wong stated that it is also in the Penal Code, and although it is in the Penal Code, it is still up to the District Attorney to prosecute.

Ms. Madsen confirmed that it is under Unprofessional Conduct Code of the mandated reporting for child abuse and elder abuse.

Ms. Epstein asked if it is reasonable to find a billing monitor and obtain services within 15 days of the Board's approval of the billing monitor. Is a billing monitor an individual or a service? Ms. Madsen responded that she will get these answers from staff.

Renee Lonner moved to direct staff to make any nonsubstantive changes to the proposed language and recommend that the Board direct staff to begin the rulemaking process. Judy Johnson seconded. The Committee voted unanimously (2-0) to pass the motion.

The Committee adjourned for a lunch break at 11:22 a.m. and reconvened at 1:06 p.m. The Committee was joined by Christine Wietlisbach upon reconvening.

IX. Discussion and Possible Action Regarding Continuing Education Provider Approval, California Code of Regulations Title 16, Article 8

Ms. Rhine presented the proposed revisions to the continuing education (CE) provider regulations.

In January 2011, staff began looking at CE provider issues. Relative to reviewing course content, questions arose from some of the associations regarding how the Board looks at course content of approved CE providers.

Current law requires all licensees of the Board, as a condition of licensure renewal, to complete 36 hours of CE in, or relevant to, the licensee's respective field of practice. CE courses must be obtained from:

- An accredited or state-approved school; or,
- A professional association, licensed health facility, governmental entity, educational institution, individual, or other organization approved by the Board.

In order to be approved by the Board, a CE provider must meet the Board's course content and instructor qualification criteria as outlined in statute and regulation. CE course content shall be applicable to the practice of the particular profession, must be related to direct or indirect patient care, and must incorporate one or more of the following:

- Aspects of the discipline that are fundamental to the understanding and practice of the profession;
- Aspects of the discipline in which significant recent developments have occurred; or,
- Aspects of other disciplines that enhance the understanding or the practice of the discipline of the licensee.

Upon application, the Board ensures that the courses meet the requirements of the law. Thereafter, it is up to the CE provider to ensure that the courses being offered meet the requirements of the law. There is no further review of courses offered by CE providers. Though the Board is not given explicit authority to review course content, the Board may audit provider records to ensure compliance with the CE requirements.

Another incident occurred in 2011 with an approved CE provider, questioning the merits of that provider being approved by the Board.

Other issues that the Board has looked at in previous years:

1. Self study versus online courses: In 2008, the Board proposed to delete the regulatory provision which allowed CE credit for courses obtained through self-study. However, through a number of public meetings on the proposed revisions and in response to public

and stakeholder comments, the Board instead maintained the category of self study courses.

There has been much confusion for staff and licensees taking online courses (unlimited amount of hours credited) and how they differ from self-study courses (18-hour limit).

2. Expired provider approval: Providers are prohibited from providing courses to licensees for credit if their approval has expired. However, a conflict of law exists. The law states that upon application for renewal of an expired approval, a provider must submit a letter stating that during the time of expiration no courses were presented *but* if courses were presented during the expired period the letter shall state “that all participants have been notified that the providers approval status at the time of completion of the continuing education was expired and that continuing education hours will not be disallowed by the Board if the provider renews within one year after the expiration.”
3. Continuing competency: The Department of Consumer Affairs (DCA) and the Legislature is trying to move towards a continuing competency model versus the continuing education model for healing arts boards. Last year DCA began the discussion of transitioning healing arts boards to a continuing competency model for licensure renewal. Boards have resisted because it is a huge undertaking. Continuing competency, at its most basic level, is a model that goes beyond imposing mandatory CE courses and requires that the licensee’s knowledge, skills and clinical performance be assessed to determine areas of needed improvement.
4. CE credit for examination development: The Committee may want to consider the merits of allowing CE credit for licensees that participate in examination development.
5. Cite and fine CE providers: Currently, if the Board finds that a CE provider applicant or current CE provider is in violation of the law relating to the provision of CE, the Board has authority to either deny an application or revoke a provider approval; the Board does not have the authority to take less serious action, such as to cite and fine a provider and allow the provider to resolve any issues. The Committee may want to consider the merits of allowing the Board to take other disciplinary action against noncompliant CE providers.
6. CE provider approval through an accrediting body: This takes the Board out of the provider approval piece and puts it on an outside accrediting body. The Board would establish criteria that the accrediting body must meet. The pros to utilizing an accrediting body: 1) experts would make decisions regarding coursework, which is out of the expertise of board staff; 2) there would be oversight over the courses and instructors; and 3) it takes the Board out of the business of the provider approval process.

With so many issues to look at, this deserves an in depth look and requires working groups to address each piece and possible solutions. It is important to include stakeholders and their feedback. The Committee may wish to consider recommending to the Board the creation of a two-member subcommittee to examine the issues and possible solutions to be considered by the Committee.

Ms. Epstein supports a subcommittee or group to work through these issues.

Mr. Caldwell agreed with the idea of a subcommittee. AAMFT used to approve CE courses, but they got out of that business. The impression was that it used a lot of staff time and money, with very little revenue, to approve CE courses.

Mr. Wong agrees with Ms. Epstein and Mr. Caldwell. Mr. Wong listed questions for the subcommittee to answer:

1. What is the definition of competency?
2. How does licensing and regulation work with competency?
3. What is the licensee's responsibility, and how much is governmental regulation?

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that the National Board for Certified Counselors (NBCC) approves providers for courses. Ms. Porter added that approving conferences for CE credit would be difficult to approve ahead of time.

Dr. Johnson commented that the California Association of School Psychologists (CASP) offers CE credit for CASP-sponsored conferences.

Ms. Rhine noted that the American Psychological Association (APA) does not get into the course content.

Ms. Epstein stated that the APA performs audits on their CE providers. The process to become a CE provider through the APA is rigorous, and they are placed on a probationary period. The course content is monitored during the probationary period.

Mr. Wong stated that the ASWB and the Council on Social Work Education (CSWE) provide national accreditation. Dr. Johnson added that the National Association of School Psychologists (NASP) does the same as well.

Renee Lonner moved to recommend to the Board the creation of a two-member subcommittee to examine the issues and possible solutions to be considered by the Committee. Judy Johnson seconded. The Committee voted unanimously (3-0) to pass the motion.

XI. Discussion and Possible Regulatory Action Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008 and SB 1172, Chapter 517, Statutes of 2010

Ms. Helms presented the proposed regulations incorporating uniform standards for substance abusing healing arts licensees.

Senate Bill 1441 was signed in September 2008. The bill required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of the DCA's healing arts boards, was tasked with formulating uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees by January 1, 2010.

The goal of this process was to create consistent and uniform standards which healing arts boards would adopt through regulation, allowing consumers better and more consistent protection from substance abusing licensees.

SB 1441 outlined 16 separate topic areas for which the SACC formulated standards:

1. Specific requirements for a clinical diagnostic evaluation of the licensee, including but not limited to, required qualifications for the providers evaluating the licensee.

2. Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo a clinical diagnostic evaluation and any treatment recommended by the evaluator and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.
3. Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.
4. Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.
5. Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.
6. Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
7. Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
8. Procedures to be followed when a licensee tests positive for a banned substance.
9. Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
10. Specific consequences for major violations and minor violations.
11. Criteria that a licensee must meet in order to petition for return to practice on a full time basis.
12. Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
13. If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

14. If the board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.
15. If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.
16. Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

Board staff has incorporated the standards into the Disciplinary Guidelines, as appropriate. Standards 13 through 16 were not incorporated. These standards involve either diversion programs, which the Board does not have, or data collection, which is an internal Board function not appropriately addressed through regulations.

The proposed Uniform Standards Related to Substance Abuse and Disciplinary Guidelines consist of four parts:

1. Uniform Standards Related to Substance Abuse: This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. Penalty Guidelines: This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed.
3. Disciplinary Orders: This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new uniform standards related to substance abuse.
4. Board Policies and Guidelines: Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions.

SB 1172 requires a healing arts board to suspend a license if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. This law allows a board to adopt regulations authorizing it to suspend the license of a licensee on probation or in a diversion program for major violations and when the Board orders a licensee to undergo a clinical diagnostic evaluation.

The Uniform Standards Related to Substance Abuse, which have been added to the Board's Disciplinary Guidelines, include these authorities, and therefore, fulfill the requirements of SB 1172.

Ms. Epstein referred to the supervisor requirements under standard #7, stating there are a lot requirements put on the supervisor. She asked if it is anticipated that probationers will experience challenges in trying to find supervisors who would be willing to comply with this burden. Ms. Madsen replied that finding supervisors for probationers is already a challenge. The Board already requires reporting from those supervisors. This standard is merely specifying the content of the report and the expectations.

Mr. Wong stated that the probationer must pay for the supervision. This is a factor to the availability of supervisors.

Julie McAuliffe, BBS Probation Monitor, stated that there may be some difficulties. Most entities are not paying their supervisors; they have agreed with the probationer to allow another licensee to take on that supervisory role. Ms. McAuliffe expressed that those who may have most difficulty finding supervisors are currently registered interns and associates.

Ms. Epstein referred to standard #5 regarding guidelines required of group meeting facilitators of chemical dependency support or recovery groups. Since the facilitators are not under the Board's jurisdiction, there could be issues if the facilitator does not comply. She asked how the licensee would be impacted if the chemical dependency group does not report any unexcused absences.

Ms. Epstein referred to the drug testing standard, which states that licensees shall be required to make daily contact to determine if testing is necessary. Ms. Epstein asked what for what period of time is the licensee required to make daily contact. Ms. Madsen responded that they must adhere to this requirement for the duration of their probation. This is computer-based or the probationer can call. The Board has already been doing that for about a year. The requirement remains in place until the licensee petitions to have that condition removed.

Denise Russell, Board of Psychology (BOP) Probation Monitor, stated that BOP has always required worksite monitors for its probationers, and it is a good thing to have a place, especially if the probationer is out of the area. She never encountered an issue where a probationer could not find a monitor. The monitor sends periodic reports directly to BOP. Ms. Russell added that she never had a problem with facilitators of chemical dependency groups signing off on attendance.

Ms. Rhine stated that the issue is not the facilitator signing off on attendance; the issue is that the facilitator must report directly to the Board.

Ms. McAuliffe expressed that it is ultimately the responsibility of the licensee to ensure that the network of people are following the guidelines.

Renee Lonner moved to direct staff to make any non-substantive changes and submit to the Board for consideration. Christine Wietlisbach seconded. The Committee voted unanimously (3-0) to pass the motion.

XII. Public Comment for Items Not on the Agenda

There were no public comments made for items not on the agenda.

XIII. Suggestions for Future Agenda Items

No suggestions for future agenda items were made. However, some suggestions for future agenda items were noted throughout the meeting.

The meeting was adjourned at 1:59 p.m.